IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 2331/1989
(BhakhtawarMal Vs. State & Ors.)

S.B. CIVIL WRIT PETITION NO. 2398/1989
(Smt. Shimla Heda & Ors. Vs. State & Ors.)

S.B. CIVIL WRIT PETITION NO. 2373/1990
(Kamal Kumar Vs. State & Ors.)

Date : 13.11.2006

HON'BLE MR. JUSTICE BHAGWATI PRASAD

Mr. M.R. Singhvi] for the petitioners.
Mr. Manish Shishodia]
Mr. H.L. Kela]
Mr. O.P. Boob for State
Mr. Rajesh Saran for Mr. D.S. Rajvi] for respondents.
Mr. L.M. Lodha]

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Heard.

These writ petitions are filed against the acquisition proceedings of the land of the petitioners. The ground of challenge of the petitioners is that similarly situated persons whose land was also ordered to be acquired have been ordered to be de-acquired. According to the learned counsel for the petitioner, major part of the land which was sought to be acquired by the notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as `the Land Acquisition Act') has already been de-acquired and therefore, acquiring the remaining part i.e. The land of the petitioner is discriminatory The second ground of attack as raised

by the petitioner is that the inquiry under Section 5-A of the Land Acquisition Act was dispensed with and in this light, the assertion of the learned counsel for the petitioner is that urgency clause as invoked cannot be made out and without the urgency clause, if Section 17 is invoked and inquiry under Section 5-A is dispensed with, this speaks of malafide intentions of the respondent to acquire only part of the land. These two points have been stated in the additional affidavit of the petitioner also.

The respondents in their reply have stated that notification under Section 17 was issued in view of the emergency clause and this has been held time and again that the satisfaction of the authorities regarding the emergency is not justiciable. The housing problem is a question of emergency and in that light, it can be seen that State has done so. The emergency is a subjective question which cannot be gone into in writ jurisdiction. The Land Acquisition Officer had already passed the award. The same has not been challenged by the petitioners by way of amending the writ petition. A reference has been preferred by the petitioner. The fact of preferring the reference shows that the petitioners are only interested in getting a proper award for their land. In that view of the matter, the challenge to acquisition cannot be sustained. As regards the de-acquisition of the other part of the land, suffice it to say that the same questions are within the domain of the State Government and no exception can be made because such is done by the State Government looking to various factors. If

ultimately, the State requires the land of the petitioners, then no exception can be made in this regard.

The petitioners in support of the arguments have relied upon the decision of the Hon'ble Supreme Court in the matter of Union of India and others Vs. Krishan Lal Arneja and others reported in (2004) 8 SCC 453. The proposition laid down in this case would not be of any assistance to the petitioner because in that case, while acquisition was ordered, the same had attained finality by judicial pronouncement, as has been noticed by the Hon'ble Supreme Court in two other cases. The Hon'ble Supreme Court did not enter into the question of emergency clause etc because that was decided in another case. In any case, in the case relied upon by the learned counsel for the petitioners, the award had not been passed in time under Section 17(3-A) of the Act. Therefore, the Hon'ble Supreme Court held that the acquisition proceedings have already lapsed. This has been so noticed in para 36 of the judgement as reproduced hereinbelow :-

> "Since we are of the view that the decisions in Banwari Lla and Shakuntala Gupta cover these appeals against the appellants, we do not consider it necessary to deal with the contention that due to non-compliance with sub-section (3-A) of Section 17 of the Act, the entire acquisition proceedings were vitiated. Further when we are upholding the impugned common order on other grounds, we do not wish to deal with this contention."

In that view of the matter, the case relied upon would not be applicable to the facts of this case.

Another case relied upon by the learned counsel for the petitioners is in the matter of Union of India and others Vs.Mukesh Hans reported in (2004) 8 SCC 14. In this case, the acquisition proceedings held earlier had concluded against the Government. These were the second proceedings. Thus, in that view of the matter, the facts of this case would not govern the facts of the present case. In the words of the Hon'ble Supreme Court itself, the cases relied upon should not be read and interpreted as statutes as has been noticed in the case of Krishan Lal Arneja (Supra) in para 12 of the judgment as reproduced below :-

> "It is needless to repeat that a judgment need not be read and interpreted as a statute and that a judgment should be read and understood in the context of the facts of the case and looking to the ratio."

In that view of the matter, the case relied upon by the learned counsel for the petitioners are of no help to the petitioners.

The argument of the learned counsel for the petitioner that land of others have been de-acquired, cannot be considered to be valid enough to handle the acquisition as in the later developments when the Land Acquisition Officer has already made the award, the petitioner has not challenge the same in this writ petition and has sought to challenge in reference proceedings. The finality of the acquisition proceedings being

not made the subject matter of the present writ petition, he has forfeited his rights to challenge the same, as invalidity is not there in either of the notifications under Section 4 or 6 of the Act.

The acquisition is sought to be annulled on the ground that land of others have been de-acquired. This cannot furnish sufficient grounds for interference as this is the total discretion of the State government as to what would be the requirement and how much would be requirement and in that regard, the State may formulate its own decisions. Hence, that ground is not valid to anul the notification.

As regards the emergency clause, suffice it to say that it is the satisfaction of the authorities. The cases relied upon by the petitioners are distinguishable and therefore, on the question of emergency clause, acquisition is not liable to be interfered.

There is no force in the writ petitions. The writ petitions are hereby dismissed.

(BHAGWATI PRASAD),J.

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